

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

CARLOS LOPEZ,

Defendant.

16 Cr. 317-22 (PAE)
19 Civ. 3463 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has reviewed the parties' helpful letter regarding the appropriate next steps in this case, and orders as follows. *See* Dkt. 687 ("Ltr."). First, consistent with the direction of the Second Circuit, the Court construes defendant Carlos Lopez's untimely August 5, 2019 appeal of this Court's May 16, 2019 dismissal of his petition under 28 U.S.C. § 2255 as a motion for an extension of time to appeal or motion to reopen the time to appeal. *See* 19 Civ. 3463, Dkts.10–11. Doing so, the Court finds that such relief is appropriate. Lopez states, and the Government does not contest, that he did not receive the order denying his § 2255 petition until after his time to file an appeal had expired. He has thus shown good cause for the untimeliness of his appeal under Fed. R. App. P. 4(a)(5)(A)(ii). Accordingly, the Court grants Lopez's motion for an extension of time to appeal the Court's May 16, 2019 dismissal. He may pursue that appeal within 14 days of this order. *See* Fed. R. App. P. 4(a)(5)(C).

Second, in light of the Court's prior dismissal being entirely procedural, and without prejudice to renewal after the disposition of Lopez's direct appeal, Lopez instead seeks leave to re-file his 2019 § 2255 petition. The Government states that it will not oppose that petition on timeliness grounds if the petition does not raise any new claims. Ltr. at 1. The Court grants Lopez leave to renew his § 2255 petition.

Third, Florian Miedel, Esq., whom the Court reappointed for the limited purpose of assisting Lopez with responding to the Second Circuit's order regarding the timeliness of Lopez's appeal, has requested reappointment to assist Lopez's pursuit of his § 2255 petition. The Court grants that request, and reappoints Mr. Miedel for the limited purpose of assisting Lopez with his § 2255 petition.

Accordingly, assuming that Lopez does not intend to continue his appeal of the Court's May 2019 denial of his § 2255 petition, the Court sets the following schedule. Lopez may renew his § 2255 petition and any brief in support by April 15, 2021. The Government's response is due June 1, 2021. Lopez's reply, if any, is due June 15, 2021.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: March 16, 2021
New York, New York